

16 Page 1 of 4
RECEIVED
JUN 26 P 5:15
DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

SHYANDREA AND MARY
HESTER, et al.,

Plaintiffs,

V.

**LOWNDES COUNTY
COMMISSION, et al.,**

Defendants.

CIVIL ACTION NO. 2:06cv572

NOTICE OF REMOVAL

To the Judges of the United States District Court for the Middle District of Alabama:

COME NOW Defendants Lowndes County Commission; Jimmy Harris, in his official and individual capacities, Emergystat, Inc. and Christopher Brown, who are Defendants in the above-styled action, and submits this Notice of Removal from the Circuit Court of Lowndes County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division (each of the defendants has decided to join in this single Notice of Removal in order to avoid unnecessary duplicative filings). Each Defendant is represented by separate counsel and preserves its right to assert its independent interests as to any issue or matter, including with respect to any issues or matters relating to the above-styled action. By joining in this single Notice of Removal, no Defendant authorizes any other party to act on its behalf as to any matter or any issue relating to the above-styled action. Each of the Defendants reserves all rights including defenses and objections as to venue, personal jurisdiction, service, and the filing of this notice of removal is subject to, and without waiver of any such defenses and objections, respectfully state as follows:

1. On May 26, 2006, an action was commenced against the Lowndes County Commission, Jimmy Harris, Christopher Brown, Emergystat, Inc., and fictitious defendants A-G by the filing of a Complaint in the Circuit Court of Lowndes County, Alabama, entitled “Shyandrea Hester et. al. v. Lowndes County, Emergystat, et. al.,” Civil Action No. CV 06.58. (See Plaintiffs’ Complaint, attached hereto as “Exhibit A”¹) The Summons and Complaint were served on the Defendants on or about May 26, 2006. In the Complaint, Plaintiffs allege state law claims of infliction of unnecessary pain and anguish; physical, verbal and mental abuse; false imprisonment; assault and battery; outrage; continued and ongoing physical and emotional trauma; improper supervision or training and gross or reckless indifference to the Constitution and laws of the state of Alabama. (Plaintiffs’ Complaint, ¶¶ 17, 19, 24, 25; see also copy of SJIS/Proof of Service for Defendants, attached hereto as “Exhibit B”). Plaintiffs also allege that the Defendants violated their rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and further, they claim violations of express provisions of 42 U.S.C. §§ 1982 and 1983. (Plaintiffs’ Complaint, ¶¶ 21, 25).

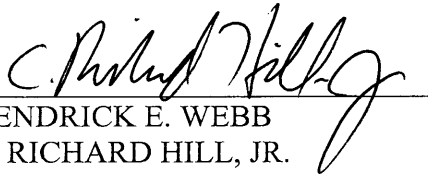
2. Defendants desire to exercise their rights under the provisions of Title 28 U.S.C. § 1441 to remove this action from the Circuit Court of Lowndes County, Alabama, in which said action is now pending under the above-styled title.

3. This is a civil action of which the District Courts of the United States have been given original jurisdiction under 28 U.S.C. § 1331 and principles of supplemental jurisdiction under 28 U.S.C. § 1367 affords the right to remove the entire case to this Court.

¹ In preparing to file this Notice of Appeal, Defendants obtained a recent SJIS report – for the purposes of proof of service – and discovered for the first time, that the Plaintiffs have filed an Amended Complaint in this matter. Defendants have not been served with this Amended Complaint, and as such, the Amended Complaint is not attached to this Notice of Removal.

WHEREFORE, PREMISES CONSIDERED, Defendants Lowndes County Commission; Jimmy Harris in his individual and official capacities; Christopher Brown, and Emergystat, Inc., respectfully file this Notice of Removal pursuant to 28 U.S.C. § 1446, removing this action from the Circuit Court of Lowndes County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division.

Respectfully submitted on this 26th day of June, 2006.


KENDRICK E. WEBB (WEB022)
C. RICHARD HILL, JR. (HIL045)

ATTORNEYS FOR DEFENDANTS LOWNDES
COUNTY, ALABAMA, COMMISSION, AND JIMMY
HARRIS

OF COUNSEL:

WEBB & ELEY, P.C.
7475 Halcyon Pointe Drive (36117)
Post Office Box 240909
Montgomery, Alabama 36124
(334) 262-1850 Telephone
(334) 262-1889 Fax

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Notice of Removal by placing a copy of the same in the United States Mail, postage prepaid, upon:

Tyrone Townsend, Esq.
P.O. Box 2105
Birmingham, AL 35201

James Earl Finley, Esq.
P.O. Box 91
Trussville, Alabama 35173

Celeste P. Holpp, Esq.
Norman, Wood, Kendrick & Turner
505 Twentieth Street North, Suite 1600
Birmingham, Alabama 35203

Honorable Ruby Jones
Lowndes County Court Clerk
P. O. Box 876
Hayneville, AL 36040

this 26th day of June, 2006.



OF COUNSEL